claims. In the second, his prison conduct is a matter of record, and his only hope rests in telling the truth, the whole truth, and nothing but the truth, as to birth, parentage and training; his social, business and criminal career. A lie—which disproves reform—means a continuation of banishment, and he knows it.

"Under the present system the young tough who commits a crime and is sent to prison 'sulkily waits for the expiration of a fixed period.' Under the ideal system he would understand that in self-improvement lay his only hope for freedom.

"The moment the door closes on him you have a man who longs with all his soul for liberty. Make him understand that liberty can never come except through himself and note the mental difference. No longer are thoughts and conversations the cleverness and mistakes in crime, or the planning upon revenge when liberated. He finds offered him an education, most certain preventives, and cures for crime. There are lectures and classes to attend and work to do by which there is money earned and saved. He is given opportunity to demonstrate his sincerity by industry, by ambition, by kind acts, by solicitude for his fellow prisoners, and for those outside whom he has caused to sorrow. Officials, teachers, the overseers in the workshops, all are his friends, not mere jailers. And in time, upon their advice, he moves his case for trial in the court of rehabilitation.

"Under the proposed system, society would be absolutely protected against him as it is now protected against the hopelessly insane. The habitual criminal would remain banished, for after several convictions no court of rehabilitation would ever again intrust him with his liberty.

"The death penalty would be abolished. But . . . the court of rehabilitation would rarely release the murderer who had plotted and calculated even after long imprisonment; it might give another chance to him that had killed in anger and with provocation, liberation coming after banishment during which he had proved strengthened self-control.

"I believe that nearly all rehabilitated men would become good citizens because the state has made them want to be such, and has given them the means to carry out their wish. I believe that in time society would be as free of crime and the criminal as is possible to any human institution. In place of the damning character to-day given a man by a prison record, it is not beyond hope that it may become in itself a recommendation, a proof of difficulties overcome, a guarantee of present ability and of future faithfulness. To-day, imprisonment is known to be futile, hence the restitution of liberty carries not the slightest suggestion that the man is in any sense more trustworthy than before. Under the proposed system, the mere fact that he has been set free would be proof of reformation." J. W. G.

PROPOSED CRIMINAL CODE FOR LOUISIANA.—There has recently been submitted to the legislature of Louisiana projects of a code of criminal law, a code of criminal procedure and a code of criminal correction, prepared by a commission of which Hon. Robert H. Marr of New Orleans is chairman. The draft of the code of criminal law embraces 639 sections, the offenses dealt with therein being classified under twenty-seven different titles, individual crimes making up each group being arranged in chapters under the appropriate title. The provisions

of the code of procedure embrace 633 articles and those of the code of correction eighty-six articles.

The foundation of the penal system of Louisiana was laid in the Crimes Act of 1805, many of the provisions of which are still in force. Several revisions of the statutes have been made, the last authoritative one being that of 1870. The legislature at each successive session since 1870 has added new crimes so that the volume of criminal legislation has grown to be very large and, as might be expected, there are numerous contradictions, incongruities and inconsistencies. Under the existing law, for example, it is a greater offense to shoot at a man than to shoot him with intent to murder; to assault with intent to rob than to actually commit robbery. Out of this mass of legislation the commission has sought to construct a harmonious system by elimination, compression, amendment of penalties and change of verbiage. The commission believes that there is a decided advantage in having the entire criminal law of the state in a compact body so that lawyers and judges will not have to search out the law as it lies scattered through an enormous mass of legislation and many volumes of reports. It has carefully defined all offenses as well as numerous terms employed in the criminal statutes. The need of such definitions was well shown in the recent Treadaway case where the Supreme Court nullified the anti-concubinage law because the state had failed to define, as most of the southern states have done, the meaning of the word "negro." It may be interesting to note that the proposed code defines the term "negro" to include all persons of one-sixteenth or more negro blood, provided that whenever a person is reputed to be colored the burden of proof shall rest upon him who alleges the contrary and that whenever he is reputed to be white the burden of proof shall likewise rest upon him who alleges the contrary. The existing criminal procedure of Louisiana is very complex, many of its provisions being uncertain and illy defined, and much of it being entirely judge-made. The commission has wisely endeavored to introduce as far as possible simplicity and certainty and has, in many instances, we believe, recommended changes that will do away with miscarriages of justice. Thus it is enacted that while an indictment must state every fact and circumstance necessary to constitute the offense, it need do no more. It is declared, furthermore, that no indictment shall be held insufficient for want of the averment of any matter unnecessary to be proved, nor for the omission of useless words and phrases, such as "feloniously," "unlawfully," "with force and arms," etc., etc. In view of the practice of the supreme courts of some of the states in overruling the judgments of trial courts because of mere verbal omissions such a provision is most timely. Moreover, it is declared to be sufficient in every indictment for murder to state that the defendant did murder the deceased, the other verbiage and circumlocution that usually encumbers the indictment being unnecessary. Finally, an important reform already introduced in a number of states is the provision which allows the court to amend an indictment when there is a variance between the language of the indictment and the evidence offered, so long as the cause of the defendant is not prejudiced thereby. An important reform proposed relates to the procedure in insanity cases. Thus it is provided that whenever a plea of insanity shall be filed a commission of lunacy shall be constituted to determine the question of sanity. That is, insanity shall be a special plea and must be set up and tried before and independently of the trial of the plea of guilty. With

regard to challenges the commission wisely, we believe, takes the view that there is no sound reason why the defendant should be allowed a greater number than the state. The proposed code, therefore, provides that the state and the accused shall have an equal number of challenges—twelve—in every criminal case.

A provision which ought to be a means of removing a growing evil is article 398, which empowers the judge to stop the prolonged, unnecessary and irrelevant examination of a witness, whether such examination be direct or cross. A provision which will commend itself to all enlightened minds is one which provides that hereafter all executions of the death penalty in the state shall take place within the walls of the penitentiary, and that as soon as the necessary facilities may be provided executions shall be by electrocution. The proposed code also provides for the indeterminate sentence and for the release of first offenders on probation, but leaves it entirely within the discretion of the judge as to whether he shall impose such indeterminate sentence or shall release on probation or shall sentence the convict to a fixed term.

The project of the commission represents the first attempt to provide for the state a code of prison discipline. "We have," says the commission, "statutes on commutation and statutes providing that every person sentenced for crime shall be made to labor. But there is practically no legislation governing the treatment of prisoners. The provisions of the Code of Criminal Correction on the subject of commutation of sentences is supplemented by providing for the release of prisoners on parole, and the system of commutation is itself perfected by providing for a system of marks so that the amount of commutation, within the legal limits, to which any prisoner shall be entitled shall depend altogether upon the conduct of the prisoner. Convict labor is the least productive of all labor, and the commission has believed that, whereas the resources of the state will not permit the setting aside of any money for the payment of convicts, a diminution of the term of imprisonment based upon the labor and the conduct of the convict would be productive of as good results as the payment of wages. If the convict knows that by good conduct and that by attention to his duties he will shorten the length of his imprisonment, the chances are that he will keep on his good behavior.

"The present law provides for the release of life convicts at the expiration of fifteen years, provided that not more than a certain number of such convicts shall be released in any one year. This provision is neither just nor logical. The commission has, therefore, provided that sentence to life imprisonment shall for purposes of commutation be considered as being for twenty-five years. That is to say, it will be possible for the life convict by earning the maximum commutation for good behavior to be released at the end of about seventeen years."

Finally, it is provided that tubercular prisoners shall be separated from other prisoners and that insane convicts, persons acquitted by reason of insanity and persons not prosecuted by reason of present insanity, shall be kept detained in an asylum for the criminal insane. The commission recommends that a constitutional amendment should be adopted providing for the creation of juvenile courts, but providing further that the jurisdiction of these courts shall be such as the legislature may by law establish. "To prohibit the punishment for rape, murder or other felony of a youth up to the age of seventeen years is to encourage crime. A negro male of sixteen years is a mature man, and to say that when

he commits a felony he is merely a 'delinquent,' and shall not be treated and punished as a criminal, is to expose society to very grave dangers." J. W. G.

TRIAL BY JUDGE AND JURY.—Under the above caption, Henry Clay Caldwell judge of the United States Circuit Court of Appeals for the Eighth Circuit, protests, in the May number of the *American Federationist,* against the tendency of judges, and especially of federal judges, in their public addresses to exalt the office of the judge at the expense of the jury. Judge Caldwell departs from the usual custom for federal judges and presents what is in some respects a very remarkable defense of the jury system. He starts out with a criticism of the uses to which the injunction is now being put and declares that it is being employed to undermine the constitutional right of trial by jury. The writ is now used for purposes, he says, which bear no more resemblance to the uses of the ancient writ than the milky way bears to the sun. Formerly it was used to conserve property in dispute between litigants, but in modern times it has taken the place of the police powers of the state and nation. It attacks and nullifies state laws upon pure questions of fact, which it refuses to submit to a jury. By means of it the judge not only restrains and punishes the commission of crimes defined by statute, but he proceeds to frame a criminal code of his own by which various acts, innocent in law and morals, are made criminal, such as standing, walking or marching on the public highway. The extremely erroneous view is beginning to prevail, he says, that the President of the United States cannot enforce the law without first obtaining the consent of a federal chancellor.

Passing to a consideration of the utility and value of trial by jury, he declares that its immense superiority to any other mode of trial in criminal cases is indisputable. The criminal law takes no note of moral justification, but only legal. It is the province of the jury to correct this defect. Thus, it will convict the assassin, but not the girl who kills her seducer. Immunity to murderers generally would soon dissolve the bonds of society; but juries instinctively feel that the social bond is not weakened, but rather strengthened, by the death of a seducer at the hands of his victim. Judges are as prone to be partial and oppressive, from personal or political prejudice, as juries and they are often more responsible for miscarriages of justice in criminal cases than juries are. Ten guilty men escape through the errors and mistakes and technical quibbles of the courts for one who escapes through an error of the jury.

"The twelve men summoned from the body of the people represent, in their several persons, different pursuits and occupations in life. Their prejudices, if they have any, resulting from their varied pursuits and environments, counteract each other; but the single judge, having no counterpoise, his bias and prejudice find full and unrestrained expression in his judgments. He is, besides, constantly struggling to force his decision into the groove of precedent, and to that end keeps on pursuing precedent and analogies and refining and refining until he grows 'wild with logic and metaphysics' and loses sight of the facts and merits of the case in hand. Juries performing casual service only can never acquire the bad habit of fixed tribunals of deciding mechanically upon some supposed precedent.

"Moreover, the consequences of an erroneous verdict by a jury are immeasurably less than an erroneous verdict by the judge; for one jury is not bound by the error of a former jury, but the law of precedent will compel the judge to adhere to his error, for it is a rule of fixed tribunals that consistency in error